

~AO 241

Page 2 (Rev.12/04)

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

08-0374

United States District Court		District: DELAWARE
Name (under which you were convicted): MARK ANTHONY KIRK		Docket or Case No:
Place of Confinement : DELAWARE CORRECTIONAL CENTER, 1181 Paddock Rd., Smyrna, DE 19977		Prisoner No.: 00291259
<p><i>Petitioner (include the name under which you were convicted)</i> <i>Respondent (authorized person having custody of petitioner)</i></p> <p>MARK ANTHONY KIRK v. PERRY PHELPS, Warden</p>		
The Attorney General of the State of BEAU BIDEN		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

DELAWARE SUPERIOR COURT, NEW CASTLE COUNTY

(b) Criminal docket or case number (if you know): 9612002650

2. (a) Date of the judgment of conviction (if you know): 2/11/2005

(b) Date of sentencing: 2/11/2005

3. Length of sentence: 39 YEARS

4. In this case, were you convicted on more than one count or of more than one crime?

☐ Yes

☒ No

5. Identify all crimes of which you were convicted and sentenced in this case:

MANSLAUGHTER (3 CNTS); ASSAULT 2nd (2CNTS)

6. (a) What was your plea? (Check one)

☒ (1) Not guilty

☐ (3) Nolo contendere (no contest)

☐ (2) Guilty

☐ (4) Insanity plea

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CLERK, U.S. DISTRICT COURT
DISTRICT OF DELAWARE

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?
N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☒ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: DELAWARE SUPREME COURT

(b) Docket or case number (if you know): 2005 WL 3526325

(c) Result: AFFIRMED

(d) Date of result (if you know): 12/23/2005

(e) Citation to the case (if you know): 2005 WL 3526325

(f) Grounds raised: STATUTE OF LIMITATIONS VIOLATION (JURISDICTION)

(g) Did you seek further review by a higher state court? ☐ Yes ☒ No

If yes, answer the following:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Result: N/A

(4) Date of result (if you know): N/A

(5) Citation to the case (if you know): N/A

(6) Grounds raised: N/A

(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11 If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: DELAWARE SUPRIOR COURT, NCCo

(2) Docket or case number (if you know): 9612002650 R4

(3) Date of filing (if you know): 3/21/2007

(4) Nature of the proceeding: RULE 61 MOTION FOR POST-CONVICTION
RELIEF

(5) Grounds raised: NEW EVIDENCE

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?
☐ Yes ☒ No

(7) Result: DENIED

(8) Date of result (if you know): 5/14/2007 2007 WL 1446671

~AO 241
(Rev.12/04)

Page 5

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? N/A

~~☐ Yes~~ ~~☒ No~~

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

~AO 241
Rev.12/04)

Page 6

(6) Did you receive a hearing where evidence was given on your petition,
application, or motion?

☐ Yes

☐ No

N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition,
application,
or motion?

(1) First petition: ☒ Yes ☐ No

(2) Second petition: ☐ Yes ☐ No

(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:
N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: PETITIONER DENIED RIGHT TO FAIR TRIAL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): SEE

MEMORANDUM OF LAW

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

~AO 241
(Rev.12/04)

Page 7

(c) **Direct Appeal of Ground One:**

(1) if you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) if you did not raise this issue in your direct appeal, explain why: **EVIDENCE NOT AVAILABLE AT THE TIME.**

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) if your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: **RULE 61 MOTION FOR POST-CONVICTION RELIEF**

Name and location of the court where the motion or petition was filed: **DELAWARE SUPERIOR COURT, NCCo, WILMINGTON, DELAWARE**

Docket or case number (if you know): **9612002650**

Date of the court's decision: **5/14/2007**

Result (attach a copy of the court's opinion or order, if available): **DENIED; 2007 WL 1446671**

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d) (4) is "Yes," did you raise this issue in the appeal ☒ Yes ☐ No

(6) If your answer to Question (d) (4) is "Yes," state:

Name and location of the court where the appeal was filed: **DELAWARE SUPREME COURT, DOVER,**

DEL.

Docket or case number (if you know): **293, 2007**

Date of the court's decision: **12/5/2007**

Result (attach a copy of the court's opinion or order, if available): **2007 WL 4260174**

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

GROUND TWO: INEFFECTIVE ASSISTANCE OF COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): SEE MEMORANDUM OF LAW

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: EVIDENCE NOT AVAILABLE AT THE TIME.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d) (1) is "Yes," state:

Type of motion or petition: RULE 61 MOTION FOR POST CONVICTION RELIEF

Name and location of the court where the motion or petition was filed: DELAWARE SUPERIOR COURT,
WILMINGTON, DEL.

Docket or case number (if you know): 9612002650

Date of the court's decision: 5/14/2007

Result (attach a copy of the court's opinion or order, if available): 2007 WL 1446671

- (3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No
 (4) Did you appeal from the denial of your motion or petition ☒ Yes ☐ No
 (5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No
 (6) If your answer to Question (d) (4) is "Yes," state:

Name and location of the court where the appeal was filed: DELEWARE SUPREME COURT, DOVER, DEL.

Docket or case number (if you know): 293, 2007

Date of the court's decision: 12/5/2007

Result (attach a copy of the court's opinion or order, if available): 2007 WL 4260174

(7) If your answer to Question (d) (4) or Question (d) (5) is "No," explain why you did not raise this issue: N/A

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: N/A

GROUND THREE: NEWLY DISCOVERED EVIDENCE

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): SEE MEMORANDUM OF LAW

~AO 241
(Rev.12/04)

Page 10

(b) If you did not exhaust your state remedies on Ground Three, explain why? N/A

(c) **Direct Appeal of Ground Three:**(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) (f you did not raise this issue in your direct appeal, explain why: EVIDENCE NOT AVAILABLE AT THE TIME

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d) (1) is "Yes," state:

Type of motion or petition: RULE 61 MOTION FOR POST-CONVICTION RELIEF

Name and location of the court where the motion or petition was filed: DELAWARE SUPERIOR COURT,
WILMINGTON, DEL.

Docket or case number (if you know): 9612002650

Date of the court's decision: 5/14/2007

Result (attach a copy of the court's opinion or order, if available): 2007 WL 1446671

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d) (4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d) (4) is "Yes," state:

Name and location of the court where the appeal was filed: DELAWARE SUPREME COURT, DOVER, DEL.

Docket or case number (if you know): 293, 2007

Date of the court's decision: 12/5/2007

Result (attach a copy of the court's opinion or order, if available): 2007 WL 4260174

(7) N/A

(e) N/A

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised. N/A

~AO 241
(Rev. 12/04)

Page 12

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: RAYMOND RADULSKI
JAMES GARVIN
(b) At arraignment and plea: RAYMOND RADULSKI
JAMES GARVIN
(c) At trial: RAYMOND RADULSKI
JAMES GARVIN
(d) At sentencing: RAYMOND RADULSKI
JAMES GARVIN
(e) On appeal: RAYMOND RADULSKI
(f) In any post-conviction proceeding: PRO SE

(g) On appeal from any ruling against you in a post-conviction proceeding: PRO SE

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?

☐ Yes

☐ No

N/A

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

NEWLY DISCOVERED EVIDENCE, AS PER 28 § 2244(d)(1)(D)

WHEREFORE, in light of the facts and evidence presented herein, the petitioner prays this Court to grant the petition for *writ of habeas corpus*, and order the petitioner's immediate release from custody.

11 January 2008
DATE



Mark Kirk, #291259, *pro se*
DCC, 1181 Paddock Rd.
Smyrna, DE 19977-9679

CERTIFICATE OF SERVICE

I, VIRGINIA L. KIRK, do hereby certify that I caused to be delivered the enclosed *Petition For Writ of Habeas Corpus*, via U.S. Mail, this 16 day of JANUARY, 2008, to the following:

United States District Court of Delaware
Boggs Federal Bldg.
844 N. King St., Lockbox 18
Wilmington, DE 19801

Beau Biden, Att.Gen.
Dept. of Justice
820 N. French St.
Wilmington, DE 19801

Please return confirmation of docketing. Thank you.

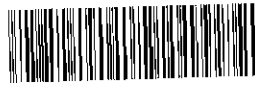
JANUARY 16, 2008
Date

Virginia L. Kirk
Signature



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